

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 25, 2006

Agenda ID #5853
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 06-03-025

This is the draft decision of Administrative Law Judge (ALJ) Prestidge. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ Prestidge at tom@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's web site, www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ PRESTIDGE** (Mailed 7/25/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Acceris Management and Acquisition LLC for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Services in the State of California.

Application 06-03-025
(Filed March 24, 2006)

**OPINION DENYING APPLICATION FOR
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY****I. Summary**

Acceris Management and Acquisition LLC (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide resold local exchange telecommunications services in the State of California. Applicant currently holds a CPCN which authorizes the provision of resold interexchange services in this state.¹

By this decision, we deny the application based on decisions of the Federal Communications Commission (FCC) that found Applicant in violation of laws and regulations designed to protect customers from “slamming” on 11 occasions in 2003, 2004, and 2005.² If Applicant does not become the subject of additional regulatory actions, including complaints, investigations, license revocations or

¹ See Decision (D.) 05-10-07, which granted Applicant CPCN #U-6971-C.

² “Slamming” is generally defined as an unauthorized change in a customer’s selection of a provider of telephone exchange service or toll service.

suspensions by the FCC or state regulatory authorities based on instances of slamming or other violations of law or regulatory requirements, Applicant may reapply for expanded CPCN authority no sooner than one year from the effective date of this decision.

II. Background

In prior decisions we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone Company (SureWest), previously named Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a Minnesota limited liability company, seeks authority to provide resold local exchange services within the service territories of Pacific and Verizon. Applicant plans to primarily serve business customers.

Applicant's principal place of business is located at 60 South Sixth Street, Suite 2535, Minneapolis, MN 55402.

III. Financial Qualifications

To be granted a CPCN for authority to provide resold local exchange and/or interexchange services, an applicant must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.³ An applicant must also demonstrate that it has sufficient additional

³ The financial requirement for CLCs is contained in D.95-12-056, Appendix C. The financial requirement for IECs is contained in D.91-10-041.

resources to cover all deposits required by local exchange carriers (LECs) and/or IECs in order to provide the proposed service.⁴ Applicant has provided financial documentation that demonstrates that it has sufficient cash to satisfy the financial requirement plus any required deposits.

IV. Technical and Managerial Qualifications/ Prior Instances of Slamming

Applicants for IEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its management which demonstrates their technical qualifications to operate as a telecommunications provider.

The Commission may also deny a CPCN application in order to protect the public interest if the applicant fails to demonstrate that its management is qualified to operate a telecommunications provider in a manner that complies with applicable laws and adequately serves the public.⁵

The FCC has found that Applicant or its predecessor violated regulations that prohibit the “slamming” of customers on 11 occasions between 2003 and 2005.⁶ Our review of the relevant FCC decisions indicates that Applicant has engaged in the following violations:

⁴ The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁵ See D.04-05-033.

⁶ See 2003 FCC LEXIS 3035 (May 23, 2003), 2004 FCC LEXIS 2140 (April 28, 2004), 2004 FCC LEXIS 3464 (June 22, 2004), 2004 FCC LEXIS 3457 (June 22, 2004), 2004 FCC LEXIS

Footnote continued on next page

- On one occasion, Applicant failed to submit a third party verifier (TPV) recording or a letter of agency confirming that the customer wished to switch its telecommunications provider to Applicant;⁷
- On 2 occasions, Applicant failed to give proper notice to customers when Applicant purchased the customer base of another telecommunications carrier;⁸
- On 4 occasions, Applicant's TPV failed to obtain separate authorization from the customer for each service sold;⁹
- On 2 occasions, the letter of agency, which switched the customer's telecommunications provider to Applicant, did not include an electronic signature;¹⁰
- On 2 occasions, Applicant's TPV failed to confirm the phone number that the customer wished to switch to Applicant's service.¹¹

Applicant states that most of the complaints involved its predecessor corporation, Acceris Communications Corporation, and that most of the violations resulted from the failure of its TPV to have customers agree separately

4046 (July 21, 2004), 2005 FCC LEXIS 2010 (March 29, 2005), 2005 FCC LEXIS 2004 (March 29, 2005), 2005 FCC LEXIS 2055 (March 30, 2005), 2005 FCC LEXIS 2503 (April 27, 2005), 2005 FCC LEXIS 2934 (May 18, 2005), 2005 FCC LEXIS 3649 (June 23, 2005), 2005 FCC LEXIS 5405 (September 29, 2005).

⁷ See 2004 FCC LEXIS 3464 (June 22, 2004).

⁸ See 2005 FCC LEXIS 2924 (May 18, 2005), 2004 FCC LEXIS 4046 (July 21, 2004).

⁹ See 2005 FCC LEXIS 2010 (March 29, 2005), 2005 FCC LEXIS 2055 (March 30, 2005), 2005 FCC LEXIS 2503 (April 27, 2005); 2005 FCC LEXIS 3649 (June 23, 2005).

¹⁰ See 2004 FCC LEXIS 2140 (April 28, 2004), 2003 FCC LEXIS 3035 (May 23, 2003).

¹¹ See 2004 FCC LEXIS 3457 (June 23, 2004), 2005 FCC LEXIS 2004 (March 29, 2005).

to local, long distance, and local toll service. Instead, the TPV program asked the customer to confirm all three types of service with a single “yes,” in violation of FCC requirements. Applicant states that this error has been corrected, and that these complaints represented less than ½ of 1% of its customer base at that time. Applicant also states that it is not seeking new residential customers in any market at this time, but is applying for expanded CPCN authority solely to provide business customers with switched and dedicated local service on a resale basis. Applicant claims that it will confirm orders for any new service from business customers with a written contract and an order form.

In addition, Applicant states that it now has a regulatory complaint database which tracks any complaints received, which helps ensure that Applicant responds to any complaints from customers or regulatory agencies.

Although some of FCC decisions appear to involve “technical” violations, we are troubled by Applicant’s history of failure to comply with regulations designed to protect customers from unlawful slamming. In view of this history, we are unwilling to expand Applicant’s existing CPCN authority in this state at this time, because Applicant has failed to demonstrate that it will operate the company in a way that complies with legal and regulatory requirements, and we wish to protect consumers from unlawful slamming by telecommunications providers.

If, however, Applicant operates its company for a period of at least one year without becoming the subject of additional regulatory actions, including complaints, investigations, license revocations or suspensions by the FCC or state regulatory authorities based on violations of legal or regulatory requirements, particularly those designed to protect consumers, Applicant may then re-apply

for expanded CPCN authority in this state no sooner than 12 months after the effective date of this decision.

We take no action regarding Applicant's existing CPCN #U-6971-C in this decision. However, if Applicant engages in additional slamming of customers or other violations of legal or regulatory requirements, we may seek revocation of Applicant's existing CPCN or other sanctions against Applicant.

V. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Comments were received from Applicant on _____ 2006.

VI. Categorization and Need for Hearings

In Resolution ALJ 176-3170 dated April 13, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. The applicant has been given an opportunity to provide additional information regarding its history of slamming and its other qualifications to operate as a telecommunications provider in writing. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VII. Assignment of Proceeding

Rachelle B. Chong is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on April 14, 2006.
2. No protests have been filed.

3. A hearing is not required.
4. In prior decisions the Commission authorized competition in providing interexchange services for carriers meeting specified criteria.
5. In prior decisions the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest, and CTC.
6. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
7. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
8. Applicant's management has sufficient technical expertise to operate the company.
9. The FCC has found that on 11 occasions between 2003 and 2005, Applicant has engaged in the unlawful slamming of customers.
10. In view of its recent history of violations of FCC requirements designed to protect customers from unlawful slamming, Applicant has failed to demonstrate the ability to operate as a telecommunications carrier in a lawful manner that appropriately serves the public at this time.

Conclusions of Law

1. Applicant has the financial ability and technical expertise to provide the proposed service.
2. In view of Applicant's history of slamming, Applicant has not demonstrated sufficient managerial expertise to operate as a telecommunications carrier at this time.

3. In view of Applicant's history of slamming, granting the application at this time would not serve the public interest.

O R D E R

IT IS ORDERED that:

1. The application is denied.
2. If Acceris Management and Acquisition LLC (Applicant) is found not to have engaged in additional acts of slamming or other violations of law or regulatory requirements within 12 months after the effective date of this decision, Applicant may reapply for an expanded certificate of public convenience and necessity at or after that time. They shall specifically reference this decision in any future application.
3. Application 06-03-025 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated July 25, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

******* SERVICE LIST *******

**Last Update on 25-JUL-2006 by: SMJ
A0603025 NOPOST**

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